

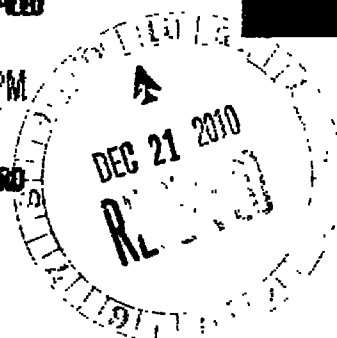
December 2, 2010

RECORDATION NO. 29646 FILED

Mr. Daniel R. Elliott III, Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

FEB 14 '11 -3 38 PM

SURFACE TRANSPORTATION BOARD



Dear Chairman Elliott:

I have enclosed an original and one copy/counterpart of the document(s) described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code. This document is a forgivable loan agreement, a primary document, dated November 29, 2010, including a UCC-1 Financing Statement filed in the State of Iowa.

The names and addresses of the parties to the documents are as follows:

- Lendor: State of Iowa through the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309.
- Recipient: Appanoose County Community Railroad, P.O. Box 321, Centerville, IA 52544.

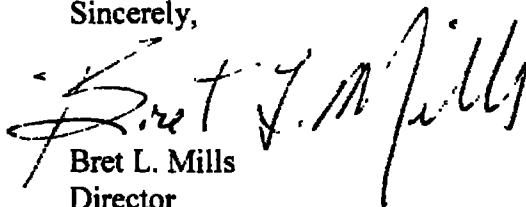
A description of the equipment covered by the document follows:

Vendee's locomotive, which is registered with the Federal Railroad Administration as APNC 973; has a serial number of 19070; was built in 1952 by Electro-Motive, a division of General Electric; is a diesel, is a model No. GP7; and has a number assigned of 973, which is also the number by which it has been known to the Vendee.

Please return the original and any extra copies not needed by the Board for recordation, as well as any charges for any fees that may be required, to: Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309, Attention: Compliance.

A short summary of the document to appear in the index follows: a forgivable loan agreement, including a security agreement, between the Iowa Department of Economic Development and the Appanoose County Community Railroad dated November 29, 2010 covering the Appanoose County Community Railroad's Vendee's locomotive, which is registered with the Federal Railroad Administration as APNC 973; has a serial number of 19070; was built in 1952 by Electro-Motive, a division of General Electric; is a diesel, is a model No. GP7; and has a number assigned of 973, which is also the number by which it has been known to the Railroad.

Sincerely,


Bret L. Mills
Director

Enclosures, as stated

December 7, 2010

DEC 21 2010
RECEIVED

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: E-filing for Iowa Department of Economic Development
Security Interest for Appanoose County Community Railroad
Security: APNC 973 diesel locomotive

To Whom It May Concern:

Please find enclosed a check in the amount of ^{\$41.00}~~\$34.00~~ as a recordation fee for a security interest held by the Iowa Department of Economic Development in regard to a direct financial assistance award made to Appanoose County Community Railroad. This recordation was completed online via your e-filing system today, and I have enclosed a copy of the document attached to the e-filing.

If you any questions in regard to this recordation or additional information is required, please contact me at 515-725-3041 or Kristi.steil@iowa.gov. Thank you for your assistance in this matter.

Sincerely,



Kristi Steil
Project Assistant
Compliance

/ks

Enclosure

RECORDATION NO. 29646 FILED

FEB 14 '11 -3 38 PM

JOHNSON COUNTY TRANSPORTATION BOARD

***ECONOMIC DEVELOPMENT
FINANCIAL ASSISTANCE CONTRACT***

BY

Appanoose County Community Railroad,

APPANOOSE COUNTY,

AND THE

IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT

CONTRACT NUMBER: 10-IVF-026

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ARTICLE 10 MISCELLANEOUS

CONTRACT EXHIBITS

- | | |
|-------------|--|
| Exhibit A - | Recipient's Financial Assistance Application (on file with IDED), Application # 10-IVF-026 |
| Exhibit B - | Description of the Project and Award Budget |
| Exhibit C - | Form of UCC-1 Financing Statement |
| Exhibit D - | Promissory Note(s) |

Economic Development Financial Assistance Contract

RECIPIENT:	APPANOOSE COUNTY COMMUNITY RAILROAD
COMMUNITY:	APPANOOSE COUNTY
CONTRACT NUMBER:	10-IVF-026
AWARD DATE:	October 15, 2009
AWARD AMT. – CASH	\$150,000.00

This ECONOMIC DEVELOPMENT FINANCIAL ASSISTANCE CONTRACT (the “Contract”) is made as of the Contract Effective Date by the Iowa Department of Economic Development (“IDED”), 200 East Grand Avenue, Des Moines, IA 50309, Appanoose County Community Railroad (“Recipient”), P.O. Box 321, Centerville, IA 52544, and Appanoose County (“Community”), 201 North 12th Street, Centerville, IA 52544.

WHEREAS, the Recipient submitted an application to IDED requesting financial assistance in the financing of its Project as more fully described in Exhibit B, *Description of the Project and Award Budget* (the “Project”); and

WHEREAS, the Iowa Department of Economic Development Board (“IDED Board”) awarded the Recipient financial assistance for the Project from the funding sources identified herein, all of which are subject to the terms and conditions set forth herein and collectively referred to as the “Award”; and

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Recipient, the Community and IDED agree to the following terms:

ARTICLE 1 CONTRACT DURATION

This Contract shall be in effect on the *Contract Effective Date* and shall remain in effect until after completion of each of the following:

- (a) **Through Project Completion Period Date.** Through the Project Period Completion Date and for a reasonable period of time after Project Period Completion Date during which IDEED will conduct Project closeout procedures to verify that the Project was completed in compliance with Contract requirements.
- (b) **Through Maintenance Period Completion Date and Contract Closeout.** Through the Maintenance Period Completion Date and for a reasonable period of time after Maintenance Period Completion Date during which IDEED will conduct closeout procedures to verify that the Project was maintained in compliance with Contract requirements.
- (c) **Contract End Date.** Until IDEED has completed Contract closeout procedures and provided Recipient and Community with written Notice of Final Contract Closeout. This Contract shall terminate as of the date (the "*Contract End Date*") stated in the written *Notice of Final Contract Closeout*.

ARTICLE 2 DEFINITIONS

2.1 Definitions. The following terms apply to this Contract:

"Award Date" means the date first stated in this Contract and is the date the IDEED Board approved the awarding of financial assistance to the Recipient for the Project.

"Award Funds" means the cash that is provided by IDEED for this Project.

"Contract Effective Date" means the latest date on the signature page of this Contract.

"Contract End Date" means the date stated in the Notice of Final Contract Closeout issued by IDEED pursuant to Article 1.

"Forgivable Loan" means a form of an award made by the IDEED to the Recipient for which repayment is eliminated in part or entirely if the Recipient satisfies the terms of this Contract.

"Project" means the description of the work and activities to be completed by the Recipient as outlined in Exhibit B - Description of the Project and Award Budget.

"Project Completion Date" means the date 3 years from the Award Date by which the Recipient must complete the Project.

"Project Completion Period" means the period of time between Award Date and the Project Completion Date.

"Maintenance Period" means the period of time between the Project Completion Date and the Maintenance Period Completion Date. The Project must be maintained in Iowa for this period of time.

"Maintenance Period Completion Date" means the date 2 years from the Project Completion Date and is the date on which the Maintenance Period ends.

"Security Documents" means all security agreements, financing statements, mortgages, personal and/or corporate guarantees required by the IDED Board for this Award.

ARTICLE 3 AWARD TERMS

3.1 Total Award Amount. The IDED Board has approved an Award to the Community and Recipient from the funding sources and in the maximum amounts shown below:

DIRECT FINANCIAL ASSISTANCE	FORM	MAXIMUM AMOUNT
IVF Infrastructure Component	Forgivable Loan	\$150,000.00
TOTAL CASH ASSISTANCE:		\$150,000.00

3.2 Terms and Conditions of State Direct Financial Assistance

(a) **Award from:** IVF Infrastructure Component

(b) **Forgivable Loan.** The IDED Board awards a Forgivable Loan to Recipient on the following terms and conditions:

1. **Amount:** \$150,000.00
2. **Interest Rate:** 0%; Interest accrues from the date of first disbursement of funds.
3. **Term:** 60 months
4. **Promissory Note.** The obligation to repay the Forgivable Loan shall be evidenced by a Promissory Note executed by the Recipient.
5. **Terms of Forgiveness.** This Forgivable Loan will be forgiven if the Recipient
 - (i) Completes the Project by the Project Completion Date, and
 - (ii) Maintains the Project through the Maintenance Period Completion Date, and
 - (iii) Satisfies all other terms and of this Contract, and
 - (iv) Is not in default under this Contract.
6. **Prepayment.** The outstanding principal and accrued interest of this Forgivable Loan, or any part thereof that is not forgiven, may be prepaid in part or in full at any time without penalty.
7. **Acceleration upon Default.** If there is a failure to pay any installment of principal and interest when due, or only a portion is paid, or in the event of any other Event of Default under this Contract, the IDED may declare the entire unpaid principal and all accrued interest immediately due and payable.

3.5 Layoff, Closure or Relocation After Approval For Assistance. If the Recipient is approved to receive financial assistance and experiences a layoff or closes any of its facilities within the State, the IDED Board may reduce or eliminate some or all of the amount of financial assistance to be received.

ARTICLE 4
CONDITIONS TO DISBURSEMENT OF FUNDS; DISBURSEMENT TERMS

4.1 Direct State Financial Assistance – Disbursements of Award Funds.

(a) **Conditions to Disbursement.** The obligation of IDED to make, continue or disburse funds under this Contract shall be subject to the conditions described in this Article 4.

(b) **Process to Request Disbursement of Award Funds.** Recipient shall prepare, sign and submit disbursement requests and reports as specified in this Contract in the form and content required by IDED. Recipient shall review all disbursement requests and verify that claimed expenditures are allowable costs. The Recipient shall maintain documentation adequate to support the claimed costs.

(c) **Documents Submitted.** Funds will not be disbursed until IDED has received each of the following documents, properly executed and completed, and approved by IDED as to form and substance:

1. Contract. Fully executed Contract.
2. Promissory Note(s). The Promissory Note(s) required by Article 4.
3. Articles of Incorporation. Copies of the Articles of Incorporation of the Recipient, certified in each instance by its secretary or assistant secretary.
4. Certificate of Existence. A certificate of existence for the Recipient from the State of incorporation.
5. Results of Lien and Tax Search and Documentation of Satisfactory Credit History. Financing statement, tax and judgment lien search results, in the Recipient's state of incorporation, against the Recipient and Security and documentation of satisfactory credit history of the Recipient and guarantors, as applicable, with no judgments or unsatisfied liens or similar adverse credit actions.
6. Security Documents. The fully executed Security Documents required in Article 5, including any federal recordings of such Security Documents.
7. Other Required Documents. IDED shall have received such other contracts, instruments, documents, certificates and opinions as the IDED may reasonably request.
8. Solid or Hazardous Waste Audit. To comply with Iowa Code section 15A.1(3)"b," if the Recipient generates solid or hazardous waste, it must either: a) submit a copy of the Recipient's existing in-house plan to reduce the amount of waste and safely dispose of the waste based on an in-house audit-conducted within the past 3 years; or b) submit an outline of a plan to be developed in-house, or 3) submit documentation that the Recipient has authorized the Iowa Department of Natural Resources or Iowa Waste Reduction Center to conduct the audit.
9. Release Form – Confidential Tax Information. A signed Authorization for Release of Confidential State Tax Information form to permit IDED to receive the Recipient's state tax information directly from the Iowa Department of Revenue for the purpose of evaluation and administration of state financial assistance programs.

10. **Project Financial Commitments.** The Recipient shall have submitted documentation acceptable to IDED from the funding sources identified in Exhibit A committing to the specified financial involvement in the Project and received the IDED's approval of the documentation. The documentation shall include the amount, terms and conditions of the financial commitment, as well as any applicable schedules.
11. **Requests for Disbursement.** All disbursements of Award proceeds shall be subject to receipt by the IDED of requests for disbursement, in form and content acceptable to IDED, submitted by the Recipient. All requests shall include documentation of costs that have been paid or costs to be paid immediately upon receipt of Award proceeds.

(d) **Prior Costs.** No expenditures made prior to the Award Date may be included as Project costs. No funds will be disbursed for expenditures prior to the Award Date.

(e) **Cost Variation.** In the event that the Total Project Cost is less than the amount specified in the Exhibit A, the financial assistance shall be reduced at the same ratio to the total Project cost reduction as the ratio of the financial assistance amount to the total amount of funds provided by the Recipient and all funding sources requiring a proportional reduction of their financial contribution to the Project. Any disbursed excess above the reduced IDED participation amount shall be returned immediately to IDED.

(f) Investment of Award Proceeds.

1. In the event that the Award proceeds are not immediately utilized, temporarily idle Award proceeds held by the Recipient may be invested provided such investments shall be in accordance with State law, including but not limited to the provisions of Iowa Code chapter 12C concerning the deposit of public funds. Interest accrued on temporarily idle Award proceeds held by the Recipient shall be credited to and expended on the Project prior to the expenditure of other Award proceeds.

2. All proceeds remaining, including accrued interest, after all allowable Project costs have been paid or obligated shall be returned to the IDED within thirty (30) days after the Project Completion Date. Within ten (10) days of receipt of a written request from IDED, Recipient shall inform the IDED in writing of the amount of unexpended Award funds in the Recipient's possession or under the Recipient's control, whether in the form of cash on hand, investments, or otherwise.

4.2 Suspension, Reduction or Delay of Disbursements. Any one or more of the following shall be grounds for IDED to suspend, delay or reduce the amount of disbursement of Award Funds:

(a) ***Unremedied event of default.*** Upon the occurrence of an Event of Default (as defined in this Contract) by the Recipient, the IDED may suspend payments to the Recipient until such time as the default has been cured to IDED's satisfaction.

(b) ***Layoff, closure or relocation.*** In the event the Recipient experiences a layoff within the state of Iowa, relocates or closes any of its Iowa facilities IDED has the discretion to reduce or eliminate some or all of the amount of financial assistance to be received.

(c) ***Reduction, discontinuance or alteration of state funding/programs.*** Any termination, reduction, or delay of funds due, in whole or in part, to (i) lack of, reduction in, or a deappropriation of revenues previously appropriated or authorized for this Contract, or (ii) any other reason beyond the IDED's control may, in the IDED's discretion, result in the suspension, reduction or delay of Award Fund to the Recipient

ARTICLE 5 SECURITY REQUIREMENTS

5.1 Security for State Direct Financial Assistance Awarded. The Recipient shall execute in favor of the IDED all security agreements, financing statements, mortgages, personal and/or corporate guarantees (the "*Security Documents*") as required by the IDED Board for this Award.

(a) Form of Security. This Contract shall be secured by the collateral described below and shall remain in effect through the Contract Effective Date:

- **UCC-1 Filing:** First position UCC-1 covering the collateral identified in *Exhibit C – UCC-1 Financing Statement*. Recipient hereby grants to IDED a security interest in the Recipient's locomotive, which is registered with the Federal Railroad Administration as APNC 973; has a serial number of 19070; was built in 1952 by Electro-Motive, a division of General Electric; is a diesel is a model No. GP7; and has a number assigned of 973, which is also the number by which it has been known to the Organization. In addition, Recipient hereby grants to IDED a security interest in all of Debtor's equipment, fixtures, inventory (including all goods held for sale, lease or demonstration or to be finished under contracts of service, trade-ins, repossessions, raw materials, work in process and materials or supplies used or consumed in Debtor's business), documents, general intangibles, accounts, contract rights, chattel paper and instruments, whether now owned or hereafter acquired; and all additions and accessions to; all space and repair parts, special tools, equipment and replacements for; all returned or repossessed goods the sale of which gave rise to; and all proceeds of products of the foregoing, wherever located. The UCC-1 filing shall be in the form and content of *Exhibit C – UCC-1 Financing Statement*.
- **Filing with the federal Surface Transportation Board** according to 49 CFR §1177.3, consistent with the requirements of 49 CFR §1177.4. IDED shall submit the requisite documentation to accomplish such filing.

(b) Value of Collateral. The value, as reasonably determined by IDED, of the security shall meet or exceed the amount of Award funds disbursed.

(c) Additional or Substitute Collateral. In case of a decline in the market value of the security or any part thereof, IDED may require that additional or substitute collateral of quality and value satisfactory to IDED be pledged as security for this Award. The Recipient shall provide such additional or substitute collateral within 20 days of the date of the request for additional or substitute collateral to secure this Award in an amount equal to or greater than the amount of outstanding Award funds.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Representations of Recipient. The Recipient represents and warrants to IDED as follows:

(a) Organization and Qualifications. The Recipient is duly organized, validly existing and in good standing under the state of its incorporation. The Recipient has full and adequate power to own its property and conduct its Recipient as now conducted, and is duly licensed or qualified and in good

standing in each jurisdiction in which the nature of the Recipient conducted by it or the nature of the property owned or leased by it requires such licensing or qualifying, except where the failure to so qualify would not have a material adverse effect on the Recipient's ability to perform its obligations hereunder.

(b) Authority and Validity of Obligations. The Recipient has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of Recipient to:

1. Sign this Contract, and
2. Issue Promissory Notes on behalf of the Recipient, and
3. Secure Recipient's obligations under this Contract, and
4. Perform each and all of the obligations under the Contract.

The Contract delivered by the Recipient has been duly authorized, executed and delivered by the Recipient and constitute the valid and binding obligations of the Recipient and enforceable against it in accordance with their terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order or decree binding upon the Recipient or any provision of the Articles of Incorporation of the Recipient, contravene or constitute a default under any covenant, indenture or contract of or effecting the Recipient or any of its properties.

(c) Use of Award Funds. The Recipient hereby agrees to use Award Funds and only for the Project and for the activities described in *Exhibit B - Description of the Project and Award Budget* and this Contract. Use of Award Funds shall conform to the Budget for the Project as detailed in *Exhibit B - Description of the Project and Award Budget*. The Recipient represents that there are legally enforceable commitments in place from the funding sources identified for the Project in *Exhibit B - Description of the Project and Award Budget*.

(d) Subsidiaries. The Recipient has no Subsidiaries involved with the Project on the Contract Effective Date.

(e) Financial Reports. The balance sheet of the Recipient furnished to IDED fairly presents its financial condition as at said date in conformity with GAAP applied on a consistent basis. The Recipient has no contingent liabilities which are material to it, other than as indicated on such financial statements or, with respect to future periods, on the financial statements furnished to IDED.

(f) No Material Adverse Change. Since the Award Date, there has been no change in the condition (financial or otherwise) or Recipient prospects of the Recipient, except those occurring in the ordinary course of Recipient, none of which individually or in the aggregate have been materially adverse. To the knowledge of the Recipient, there has been no material adverse change in the condition of the Recipient (financial or otherwise) or the prospects of the Recipient

(g) Full Disclosure; Recipient's Financial Assistance Application. The statements and other information furnished to the IDED by Recipient in its Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IDED acknowledges that as to any projections furnished to the IDED, the Recipient only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

(h) Trademarks, Franchises and Licenses. The Recipient owns, possesses, or has the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets, know how and confidential commercial and proprietary information to conduct its business as now conducted, without known conflict with any patent, license, franchise, trademark, trade name, trade

style, copyright or other proprietary right of any other Person. As used in this Contract, "Person" means an individual, partnership, corporation, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

(i) **Governmental Authority and Licensing.** The Recipient has received all licenses, permits, and approvals of all Federal, state, local, and foreign governmental authorities, if any, necessary to conduct its business, in each case where the failure to obtain or maintain the same could reasonably be expected to have a material adverse effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Recipient threatened.

(j) **Litigation and Other Controversies.** There is no litigation or governmental proceeding pending, nor to the knowledge of the Recipient threatened, against the Recipient which if adversely determined would result in any material adverse change in the financial condition, Properties, Recipient or operations of the Recipient, nor is the Recipient aware of any existing basis for any such litigation or governmental proceeding.

(k) **Good Title.** The Recipient has good and defensible title (or valid leasehold interests) to all of its property involved with the Project reflected on the most recent balance sheets furnished to the IDED (except for sales of assets in the ordinary course Recipient).

(l) **Taxes.** All tax returns required to be filed by the Recipient in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Recipient or upon any of its property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees and governmental charges, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Recipient knows of no proposed additional tax assessment against it for which adequate provisions in accordance with GAAP have not been made on its accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Recipient have been made for all open years, and for their current fiscal period.

(m) **Other Contracts.** The Recipient is not in default under the terms or any covenant, indenture or contract of or affecting either the Recipient or any of its properties, which default, if uncured, would have a material adverse effect on its financial condition, properties, Recipient or operations.

(n) **No Default.** No Default or Event of Default, as defined in Article 9, has occurred or is continuing.

(o) **Compliance with Laws.** The Recipient is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the business operations of the Recipient and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the Recipient. The Recipient has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Recipient.

(p) **Effective Date of Representations and Warranties.** The warranties and representations of this Article are made as of the Contract Effective Date and shall be deemed to be renewed and restated by the Recipient at the time each request for disbursement of Award Funds is submitted to the IDED.

6.2 Representations of Community.

(a) **Local Approvals Received; Authority and Validity of Obligations.** The Community has secured all necessary local approvals and has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of the Community to:

1. Sign this Contract, and
2. Perform each and all of the Community's obligations under this Contract.

The Contract delivered by the Community has been duly authorized, executed and delivered by the Community and constitutes the valid and binding obligations of the Community and enforceable against it in accordance with their terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order or decree binding upon the Community, contravene or constitute a default under any covenant, indenture or contract of or effecting the Community or any of its properties.

(b) **Use of Award Funds.** The Community hereby agrees to use Award Funds only for the Project and for the activities described in *Exhibit B -Description of the Project and Award Budget* and this Contract. Use of Award Funds shall conform to the Budget for the Project as detailed in *Exhibit B - Description of the Project and Award Budget*. The Community represents that there are legally enforceable commitments in place for the Community local commitment identified for the Project in *Exhibit B -Description of the Project and Award Budget*.

(c) **No Material Adverse Change.** Since the Award Date, there has been no material change in the Community's ability to perform its obligations under this Contract.

(d) **Full Disclosure; Community's Financial Assistance Application.** The statements and other information furnished to the IDED by Community in its Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IDED acknowledges that as to any projections furnished to the IDED, the Community only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

(e) **Governmental Authority and Licensing.** The Community has received all licenses, permits, and approvals of all Federal, state, local, and foreign governmental authorities, if any, necessary to perform its obligations under this Contract. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Community threatened.

(f) **Litigation and Other Controversies.** There is no litigation or governmental proceeding pending, nor to the knowledge of the Community threatened, against the Community which if adversely determined would result in any material adverse change in the Community's ability to perform under this Contract nor is the Community aware of any existing basis for any such litigation or governmental proceeding.

(g) **No Default.** No Default or Event of Default by Community, as defined in Article 9, has occurred or is continuing.

(h) **Compliance with Laws.** The Community is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the operations of the Community and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the Community. The Community has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Community.

(i) **Effective Date of Representations and Warranties.** The warranties and representations of this Article are made as of the Contract Effective Date and shall be deemed to be renewed and restated by the Community at the time each request for disbursement of funds is submitted to the IDED.

ARTICLE 7 COVENANTS OF THE RECIPIENT

For the duration of this Contract, the Recipient covenants to IDED as follows:

7.1 Project Performance Obligations.

(a) **Use Award funds only for Project.** The Recipient shall use Award Funds only for the Project and for the activities described in Exhibit B -Description of the Project and Award Budget and this Contract. Use of Award Funds shall conform to the Budget for the Project as detailed in Exhibit B -Description of the Project and Award Budget. The Recipient represents that there are legally enforceable commitments in place from the funding sources identified for the Project in Exhibit B -Description of the Project and Award Budget.

(b) **Meet and Maintain Eligibility Requirements.** Recipient shall continue to meet and maintain all statutory eligibility requirements for the funding sources providing assistance under this Contract.

(c) **Project Time Period.** This Contract covers the five (5) year Project time period from the Award Date through the Maintenance Period Completion Date. Recipient shall complete and maintain the Project within the Project time period shown below:

		COMPLIANCE MEASUREMENT POINT			COMPLIANCE MEASUREMENT POINT
Award Date	Project Completion Period	Project Completion Date	Maintenance Period	Maintenance Period Completion Date	Contract Closeout

"Award Date" means the date first stated in this Contract and is the date the IDED Board approved the awarding of financial assistance to the Recipient for the Project.	"Project Completion Period" means the period of time between the Award Date and the Project Completion Date.	"Project Completion Date" means the date 3 years from the Award Date. Recipient must complete the Project by this date. At this point, IDED will review the Project to verify compliance with Contract terms and obligations.	"Maintenance Period" means the period of time between the Project Completion Date and the Maintenance Period Completion Date. The Project must be maintained in Iowa for this period of time.	"Maintenance Period Completion Date" means the date 2 years from the Project Completion Date and is the date on which the Maintenance Period ends. At this point, IDED will review the Project to verify that it was maintained in compliance with Contract terms and obligations.	IDED will conduct Contract Closeout procedures after all events described in Article 1 have been met. "Contract End Date" means the date stated in IDED's written Notice of Contract Closeout that is issued pursuant to Article 1.
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(d) **Complete Project by Project Completion Date.** By the Project Completion Date, Recipient shall complete the Project, make the total investment it pledged for the Project and in accordance with the Award Budget as detailed in Exhibit B - Description of the Project and Award Budget, and comply with all other performance requirements described in this Contract.

(e) **Total Project Costs.** By the Project Completion Date, Recipient shall have completed the Project with a Total Project Cost as detailed in Exhibit B - Description of the Project and Award Budget.

(f) **Maintain Project through Maintenance Completion Period Date.** Recipient shall maintain the Project through the Maintenance Completion Period Date.

(g) **Maintain Project in Iowa During Contract Period.** The Recipient shall at all times preserve and maintain its existence as a corporation in good standing and maintain the Project in Iowa. The Recipient will preserve and keep in force and affect all licenses, permits, franchises, approvals, patents, trademarks, trade names, trade styles, copyrights and other proprietary rights necessary to the proper conduct of its respective Recipient.

(h) **Employ Legally Authorized Workers.** Recipient shall only employ individuals legally authorized to work in this state.

7.2 Taxes and Insurance

(a) **Pay Taxes and Assessments.** The Recipient shall duly pay and discharge all taxes, rates, assessments, fees and governmental charges upon or against its properties, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and adequate reserves are provided therefore.

(b) **Maintain Insurance.** The Recipient shall insure and keep insured in good and responsible insurance companies, all insurable property owned by it which is of a character usually insured by Persons similarly situated and operating like properties against loss or damage from such hazards or risks as are insured by Persons similarly situated and operating like properties; and the Recipient shall insure such other hazards and risks (including employers' and public liability risks) in good and responsible insurance companies as and to the extent usually insured by Persons similarly situated and conducting similar business. The Recipient will upon request of the IDED furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Article.

7.3 Preserve Project and Protect Security

(a) **Maintenance of Properties.** The Recipient shall maintain, preserve and keep its

properties in good repair, working order and condition (ordinary wear and tear excepted) and will from time to time make all needful and proper repairs, renewals, replacements, additions and betterments thereto so that at all time the efficiency thereof shall be fully preserved and maintained in accordance with prudent business practices.

(b) **Restrictions on Security.** The Recipient shall not, without prior written disclosure to IDED and prior written consent of IDED, which shall not be unreasonably withheld, directly or indirectly:

1. Sell, transfer, convey, assign, encumber or otherwise dispose of any of the Security for this Project.
2. Place or permit any restrictions, covenants or any similar limitations on the Security for the Project.
3. Remove from the Project site or the State all or substantially all of the Security.
4. Create, incur or permit to exist any lien of any kind on the Security.

7.4 Business Changes.

(a) **No Changes in Recipient Operations.** The Recipient shall not materially change the Project or the nature of the business and activities being conducted, or proposed to be conducted by Recipient, as described in the Recipient's approved application for funding, Exhibit A of this Contract, unless approved in writing by IDED prior to the change.

(b) **Changes in Recipient Ownership, Structure and Control.** The Recipient shall not materially change the ownership, structure, or control of the business if it would adversely affect the Project. This includes, but is not limited to, entering into any merger or consolidation with any person, firm or corporation or permitting substantial distribution, liquidation or other disposal of business assets directly associated with the Project. Recipient shall provide IDED with advance notice of any proposed changes in ownership, structure or control. The materiality of the change and whether or not the change affects the Project shall be as reasonably determined by IDED.

7.5 Required Reports

(a) **Review of Reports.** The Recipient shall prepare, sign and submit required reports, in the form and content required by IDED, as specified in this Contract.

(b) **Reports.** The Recipient shall prepare, sign and submit the following reports to the IDED throughout the Contract period:

<u>Report</u>	<u>Due Date</u>
<u>Annual Project Status Report</u> The Annual Project Status Report will collect information from the Recipient about the status of the Project.	July 31 st for the period ending June 30th
<u>End of Project Report</u> The End of Project Report will collect information from the Recipient about the completed Project.	Within 30 days of Project Completion Date

<p><u>End of Maintenance Period Report</u> The End of Maintenance Period Report will collect information from the Recipient's continued maintenance of the Project.</p>	<p>Within 30 days of the end of the Job Maintenance Period Completion Date</p>
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(c) **Additional Reports, Financials as Requested by IDED.** The IDED reserves the right to require more frequent submission of reports if, in the opinion of the IDED, more frequent submissions would provide needed information about Recipient's Project performance, or if necessary in order to meet requests from the Iowa General Assembly, the Department of Management or the Governor's office. At the request of IDED, Recipient shall submit its annual financial statements completed by an independent CPA, or other financial statements including, but not limited to, income, expense, and retained earnings statements.

7.6 Compliance with Laws

(a) **State, local and federal laws.** Recipient shall comply in all material respects with the requirements of all applicable federal, state and local laws, rules, regulations and orders.

(b) **Environmental laws.** Recipient shall comply in all material respects with all applicable environmental, hazardous waste or substance, toxic substance and underground storage laws and regulations, and the Recipient shall obtain any permits, licenses, buildings, improvements, fixtures, equipment or its property required by reason of any applicable environmental, hazardous waste or substance, toxic substance or underground storage laws or regulations.

(c) **Nondiscrimination laws.** Recipient shall comply in all material respects with all applicable federal, state, and local laws, rules, ordinances, regulations and orders applicable to the prevention of discrimination in employment, including the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action.

(d) **Worker rights and safety.** The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules, ordinances, regulations and orders applicable to worker rights and worker safety.

(e) **Immigration laws.** Recipient shall only employ individuals legally authorized to work in this state. In addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received by a business which has received financial and is found to knowingly employ individuals not legally authorized to work in this state is subject to recapture by IDED.

(f) **Compliance with IDED's Administrative Rules.** Recipient shall comply with IDED's administrative rules for the programs providing assistance to the Project and rules governing administration of this Contract.

7.7 Inspection and Audit. The Recipient shall permit the IDED and its duly authorized representatives, at such reasonable time and reasonable intervals as the IDED may designate, to:

- (a) Conduct site visits and inspect the Project.
- (b) Audit financial records related to the Project.
- (c) Examine and make copies of the books of accounts and other financial records of the Recipient related to the Project.
- (d) Discuss the affairs, finances and accounts of the Recipient with, and to be advised as to the same by, its officers, and independent public accountants (and by this provision the Recipient authorizes such accountants to discuss with the IDED and the IDED's duly authorized representatives the finances and affairs of the Recipient).

7.8 Maintenance and Retention of Records

(a) **Maintain Accounting Records.** The Recipient is required to maintain its books, records and all other evidence pertaining to this Contract in accordance with generally accepted accounting principles and such other procedures specified by IDED.

(b) **Access to Records.** Records to verify compliance with the terms of this Contract shall be available at all times for the duration of this Contract and any extensions thereof. Recipient shall make its records available to: (i) IDED, (ii) IDED's internal or external auditors, agents and designees; (iii) the Auditor of the State of Iowa, the Attorney General of the State of Iowa, (iv) the Iowa Division of Criminal Investigations and any other applicable law enforcement agencies.

(c) **Records Retention Period.** Recipient shall retain the records for a period of three (3) years from the Contract End Date, unless the records are the subject of an audit, investigation, or administrative or legal proceeding. In those instances, the records shall be retained until the audit, investigation or proceeding has been resolved.

7.9 Required Notices from Business to IDED.

(a) **Notice of Major Changes.** The Recipient shall promptly provide IDED with written notice of any major changes that would impact the success of the Project.

(b) **Notice of Meetings.** The Recipient shall notify IDED at least two (2) working days in advance of all meetings of the board of directors at which the subject matter of this Contract or the Project is proposed to be discussed. The Recipient shall provide IDED with copies of the agenda and minutes of such meetings and expressly agrees that a representative of IDED has a right to attend those portions of any and all such meetings where the Project or this Contract is discussed.

(c) **Notice of Proceedings.** The Recipient shall promptly notify IDED of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against the Recipient which would adversely impact the Project.

7.10 Indemnification. The Recipient shall indemnify, defend and hold harmless the IDED, the State of Iowa, its departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

(a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Project;

(b) Any claim, demand, action, citation or legal proceeding arising out of or resulting from a breach by the Recipient of any representation, warranty or covenant made by the Recipient in this Contract;

(c) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Recipient is required to insure against as provided for in this Contract; and

(d) Any claim, demand, action, citation or legal proceeding which results from an act or omission of the Recipient or any of their agents in its or their capacity as an employer of a person.

7.11 Nonassignment. The Recipient shall not assign this Contract without the written consent of the IDED, which consent will not be unreasonably withheld.

7.12 Repayment of Unallowable Costs. Recipient shall repay any Award Funds received or Tax

Benefits claimed that are determined by IDEED, its auditors, agents or designees, the Auditor of State, or similar authorized governmental entity to be unallowable under the terms of this Contract.

ARTICLE 8 COVENANTS OF THE COMMUNITY

For the duration of this Contract, the Community covenants to IDEED as follows:

8.1 Local Match. The Community shall provide the local financial assistance for the Project as described in Exhibit B, Project Description and Award Budget.

8.2 Notice to IDEED. In the event the Community becomes aware of any material alteration in the Project, initiation of any investigation or proceeding involving the Project, change in the Recipient's ownership, structure or operation, or any other similar occurrence, the Community shall promptly provide written notice to IDEED.

ARTICLE 9 EVENTS OF DEFAULT; NOTICE AND OPPORTUNITY TO CURE; AND REMEDIES AVAILABLE TO IDEED

9.1 Default by Recipient. An unremedied Event of Default can result in termination of this Contract and repayment of all or a portion of the Award Funds disbursed to Recipient, plus applicable default interest and costs.

(a) **Events of Default** Any one or more of the following shall constitute an "Event of Default" under this Contract:

1. **Nonpayment.** Failure to make a payment when due (whether by lapse of time, acceleration or otherwise) for more than ten (10) business days of the due date thereof of any Loan; or
2. **Noncompliance with Covenants.** Default in the observance or performance of any covenant set forth in Article 7, for more than five (5) business days; or
3. **Noncompliance with Security Documents.** Default in the observance or performance of any term of any Security Document required in Article 5 beyond any applicable grace period set forth therein; or
4. **Noncompliance with Contract.** Default in the observance or performance of any other provision of this Contract;
5. **Material Misrepresentation.** Any representation or warranty made by the Recipient in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made in Exhibit A, Recipient's Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof; or
6. **Security Deficiencies.** Any of the Security Documents that represent the Security pledged by Recipient to secure this Contract shall for any reason fail to create a valid and perfected priority security interest in favor of the IDEED; or

7. **Judgment Over \$100,000.** Any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$100,000 shall be entered or filed against the Recipient or against any of its property and remains unvacated, unbonded or unstayed for a period of 30 days; or
8. **Adverse Change in Financial Condition.** Any change shall occur in the financial condition of the Recipient which would have a material adverse effect on the ability of the Recipient to perform under this Contract or the Funding Agreements; or
9. **Bankruptcy or Similar Proceedings Initiated.** Either the Recipient shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) fail to contest in good faith any appointments or proceeding described below; or
10. **Appointment of Officials.** A custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for either the Recipient or any substantial part of any of its respective property, or a proceeding described above shall be instituted against either the Recipient and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days; or
11. **Insecurity.** IDED shall in good faith deem itself insecure and reasonably believes, after consideration of all the facts and circumstances then existing, that the prospect of payment and satisfaction of the obligations under this Contract and/or the Funding Agreements, or the performance of or observance of the covenants in this Contract, is or will be materially impaired.
12. **Failure to Submit Required Reports.** The Recipient fails to submit complete reports by the required due dates as outlined in Article 7.5.
13. **Layoffs, Relocation or Closure.** The Recipient experiences a layoff, relocates or closes any of its facilities within the state.
14. **Hiring workers not authorized to work in state.** The Recipient fails to only employ individuals legally authorized to work in this state. If Recipient is found to knowingly employ individuals not legally authorized to work in this state then, in addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received is subject to repayment.
15. **Failure to Maintain Program Eligibility Requirements.** Recipient fails to maintain a statutory eligibility requirement for a program providing assistance under this Contract.

(b) **Notice of Default and Opportunity to Cure.** If IDED has reasonable cause to believe that an Event of Default has occurred under this Contract, IDED shall issue a written Notice of Default to the Recipient, setting forth the nature of the alleged default in reasonable specificity, and providing therein a reasonable period time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, in which the Recipient shall have an opportunity to cure, provided that cure is possible

and feasible.

(c) **Remedies Available to IDED.** When an Event of Default has occurred and is not cured within the required time period, IDED may, after written notice to Recipient:

1. Terminate this Contract.
2. Suspend or reduce pending and future disbursements.
3. Declare the principal and any accrued interest on the outstanding Promissory Notes to be forthwith due and payable, including both principal and interest and all fees, charges and other amounts payable under this Contract shall be and become immediately due and payable without further demand, presentment, protest or notice of any kind.
4. Require repayment of all or a portion of Award Funds disbursed.

(d) **Default Interest Rate.** If an Event of Default occurs and remains uncured, a default interest rate of 6% shall apply to repayment of amounts due under this Contract. The default interest rate shall accrue from the first date Award funds are disbursed.

(e) **Expenses.** The Recipient agrees to pay to the IDED all expenses reasonably incurred or paid by IDED including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Recipient or in connection with the enforcement of any of the terms of this Contract.

9.2 Default by Community. An unremedied Event of Default can result in termination of this Contract and repayment by Community of all or a portion of the pledged local match, plus applicable default interest and costs.

(a) **Events of Default.** Any one or more of the following shall constitute an "Event of Default by Community" under this Contract:

1. **Noncompliance with Covenants.** Default in the observance or performance of any covenants of the Community set forth in Article 8, for more than five (5) business days; or
2. **Material Misrepresentation.** Any representation or warranty made by the Community in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made by Community in Exhibit A, Recipient's Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof; or

(b) **Notice of Default and Opportunity to Cure.** If IDED has reasonable cause to believe that an Event of Default has occurred under this Contract, IDED shall issue a written Notice of Default to the Community, setting forth the nature of the alleged default in reasonable specificity, and providing therein a reasonable period time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, in which the Community shall have an opportunity to cure, provided that cure is possible and feasible.

(c) **Remedies Available to IDED.** When an Event of Default by Community has occurred and is not cured within the required time period, IDED may, after written notice to Community:

1. Suspend or reduce pending and future disbursements to Community
2. Require repayment by Community for the amount of local financial assistance pledged to the Project but not provided.

(d) **Default Interest Rate.** If an Event of Default occurs and remains uncured, a default interest rate of 6% shall apply to repayment of amounts due under this Contract. The default interest rate shall accrue from the first date Award funds are disbursed.

(e) **Expenses.** The Community agrees to pay to the IDED all expenses reasonably incurred or paid by IDED including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Recipient or in connection with the enforcement of any of the terms of this Contract.

ARTICLE 10 MISCELLANEOUS

10.1 State of Iowa Recognition. If the Project involves construction and there is signage recognizing the financial contributions made to the Project the Recipient agrees to include the Iowa Department of Economic Development on the list of entities providing assistance. For example, a sign or plaque indicating that the Project was funded in part by an Award from the State of Iowa, Iowa Department of Economic Development.

10.2 Choice of Law and Forum; Governing Law.

(a) In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If however, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

(b) This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the IDED, the State of Iowa or its members, officers, employees or agents.

(c) This Contract and the rights and duties of the parties hereto shall be governed by, and construed in accordance with the internal laws of the State of Iowa without regard to principles of conflicts of laws.

10.3 Contract Amendments. Neither this Contract nor any documents incorporated by reference in connection with this Contract, may be changed, waived, discharged or terminated orally, but only as provided below:

(a) *Writing required.* The Contract may only be amended if done so in writing and signed by the Recipient, the Community and IDED. Examples of situations requiring an amendment include, but are not limited to, time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

(b) *IDED Board review.* Requests to amend this Contract shall be processed by IDED in compliance with the IDED Board's rules and procedures applicable to contract amendments.

10.4 Notices. Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation by fax) and shall be given to the relevant party at its address, e-mail address, or fax number set forth below, or such other address, e-mail address, or fax number as such party may hereafter specify by notice to the other given by United States mail, by fax or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

To the Recipient at:

Appanoose County Community Railroad
Ray Cummins, Board President
P.O. Box 321
Centerville, IA 52544

E-mail: apncrr@iowatelecom.net
Telephone: 641-437-0514
Facsimile: 641-437-0514

To the IDED at:

Iowa Department of Economic Development
Legal and Compliance
200 East Grand Avenue
Des Moines, Iowa 50309
Attention: Katie Rockey, Project Manager

E-mail: katie.rockey@iowalifechanging.com
Telephone: 515-725-3040
Facsimile: 515-725-3010

To the Community at:

Appanoose County Board of Supervisors
Dean Kaster, Chairperson
201 North 12th Street
Centerville, IA 52544

E-mail: supervisors@appanoosecounty.net
Telephone: 641-856-5512
Facsimile: 641-856-5490

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Article and a confirmation of such facsimile has been received by the sender, (ii) if given by e-mail, when such e-mail is transmitted to the e-mail address specified in this Article and a confirmation of such e-mail has been received by the sender, (iii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified in this Article.

10.5 Headings. Article headings used in this Contract are for convenience of reference only and are not a part of this Contract for any other purpose.

10.6 Final Authority. The IDED shall have the authority to reasonably assess whether the Recipient has complied with the terms of this Contract. Any IDED determinations with respect to compliance with the provisions of this Contract shall be deemed to be final determinations pursuant to Iowa Code Chapter 17A, Iowa Administrative Procedure Act.

10.7 Waivers. No waiver by IDED of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the IDED in

exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by IDED shall preclude future exercise thereof or the exercise of any other right or remedy.

10.8 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

10.9 Survival of Representations. All representations and warranties made herein or in any other Contract document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Contract and the other Contract documents and shall continue in full force and effect with respect to the date as of which they were made until all of Recipient's obligations or liabilities under this Contract have been satisfied.

10.10 Severability of Provisions. Any provision of this Contract, which is unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Contract or any other Contract document may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Contract and any other Contract document are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Contract or any other Contract document invalid or unenforceable.

10.11 Successors and Assigns. This Contract shall be binding upon the Recipient and its respective successors and assigns, and shall inure to the benefit of the IDED and the benefit of their respective successors and assigns.

10.12 Nonassignment. This Contract shall not be assigned, in whole or in part, by Recipient unless approved in writing by IDED.

10.13 Termination. This Contract can be terminated under each of the following circumstances:

- (a) *Agreement of the Parties.* Upon written agreement of the Recipient, the Community and IDED.
- (b) *Unremedied Event of Default.* As a result of the Recipient's or Community's unremedied Event of Default pursuant to Article 9.
- (c) *Termination or reduction in funding to IDED.* As a result of the termination or reduction of funding to IDED as provided in Article 4.6(c).

10.14 Documents Incorporated by Reference. The following documents are incorporated by reference and considered an integral part of this Contract:

- 1. Exhibit A - Recipient's Financial Assistance Application (on file with IDED), Application #10-IVF-026
- 2. Exhibit B - Description of the Project and Award Budget
- 3. Exhibit C - Form of UCC-1 Financing Statement
- 4. Exhibit D - Promissory Note(s)

10.15 Order of Priority. In the case of any inconsistency or conflict between the specific provisions of this document and the exhibits, the following order of priority shall control:

1. Article I - 10 of this Contract.
2. Exhibit A - Recipient's Financial Assistance Application (on file with IDED), Application #10-IVF-026
3. Exhibit B - Description of the Project and Award Budget
4. Exhibit C - Form of UCC-1 Financing Statement
5. Exhibit D - Promissory Note(s)

10.16 Integration. This Contract contains the entire understanding between the Recipient and IDED relating to the Project and any representations that may have been made before or after the signing of this Contract, which are not contained herein, are nonbinding, void and of no effect. None of the Parties have relied on any such prior representation in entering into this Contract.

IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into this Contract and have caused their duly authorized representatives to execute this Contract, effective as of the latest date stated below (the "Contract Effective Date").

FOR IDED:

BY: *Bret L. Mills*
Bret L. Mills, Director

11/29/10
Date

FOR RECIPIENT:

BY: *Raymond L. Cummins*
Signature President - Ray Cummins
Typed Name and Title

11-24-10
Date

FOR THE COMMUNITY:

BY: *Dean Kaster*
Signature Dean Kaster, Board Chairperson
Typed Name and Title

11-24-10
Date

LIST OF EXHIBITS

- Exhibit A - Recipient's Financial Assistance Application (on file with IDEED), Application # 10-IVF-026
- Exhibit B - Description of the Project and Award Budget
- Exhibit C - Form of UCC-1 Financing Statement
- Exhibit D - Promissory Note(s)

**DESCRIPTION OF THE PROJECT AND AWARD BUDGET
(EXHIBIT B)**

Name of Recipient: Appanoose County Community Railroad
Name of Community: Appanoose County
Contract Number: 10-IVF-026

PROJECT DESCRIPTION

Appanoose County Community Railroad plans to rehabilitate Bridge No. 10 and replace cross ties from milepost 2.7 to 32 in Monroe County in order to maintain the viability of the line and service to Centerville and Appanoose County.

PROJECT COMPLETION DATE: October 31, 2012

MAINTENANCE PERIOD COMPLETION DATE: October 31, 2014

AWARD BUDGET

SOURCE OF FUNDS	Amount		USE OF FUNDS	Cost
IDEED Programs			*Land Acquisition	
IVF Infrastructure Component	\$150,000	Forgivable Loan	*Site Preparation	\$200,000
			*Building Acquisition	
Appanoose County	\$100,000	Grant	*Building Construction	\$800,000
Appanoose Industrial Coporation	\$100,000	Grant	*Building Remodeling	
EDA	\$500,000	Grant	*Mfg Machinery and Equipment	
Appanoose County Foundation	\$5,000	Grant	Other Machinery and Equipment	
Appanoose County Community RR	\$145,000	Cash	Racking, Shelving, etc.	
			*Computer Hardware	
			Computer Software	
			*Furniture and Fixtures	
			Working Capital	
			Research and Development	
			Job Training	
			Other Expenses	
SUBTOTAL	\$1,000,000		SUBTOTAL	\$1,000,000
			* Included as capital investment if awarded tax credit program	
SUB TOTAL	\$0		SUB TOTAL	\$0
TOTAL ALL FUNDS	\$1,000,000			\$1,000,000

E10068636-4

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

FILED
SECRETARY OF STATE
IOWA

2010-11-08 11:07

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGEMENT TO: (Name and Address)
IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

INITIAL FINANCING STATEMENT FILE #

E10033068-3

☐ This FINANCING STATEMENT AMENDMENT is to be
filed (for record) (or recorded) in the REAL ESTATE
RECORDS.

- ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.
- ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.
- ☐ **ASSIGNMENT** (full or partial): Give name and address of assignee in section below.

AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes

Also check one of the following boxes and provide appropriate information in section below.

<input type="checkbox"/> CHANGE name and/or address: Give current record name, new name (if name change), and/or new address (if address change) in section below	<input type="checkbox"/> DELETE name: Give record name to be deleted in section below.	<input type="checkbox"/> ADD name: Complete Name, and also Address section below; also complete, Tax ID, Type Of Org., Juris., and Org. ID (if applicable).
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CHANGED (NEW) OR ADDED INFORMATION

ORGANIZATION'S NAME				
OR				
INDIVIDUALS LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
TAX ID# SSN OR EIN	ADD. INFO RE ORGANIZATION DEBTOR	TYPE OF ORGANIZATION	JURISDICTION OF ORGANIZATION	ORGANIZATIONAL ID # if any

AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☒ restated collateral description, or describe collateral ☐ assigned.

First position on the Organization's locomotive, which is registered with the Federal Railroad Administration as APNC 973; has a serial number of 19070; was built in 1952 by Electro-Motive, a division of General Electric; is a diesel, is a model No. GP7; and has a number assigned of 973, which is also the number by which it has been known to the Organization. In addition, all of Debtor's equipment, fixtures, inventory (including all goods held for sale, lease or demonstration or to be finished under contracts of service, trade-ins, repossessions, raw materials, work in process and materials or supplies used or consumed in Debtor's business), documents, general intangibles, accounts, contract rights, chattel paper and instruments, whether now owned or hereafter acquired; and all additions and accessions to; all spare and repair parts, special tools, equipment and replacements for; all returned or repossessed goods the sale of which gave rise to; and all proceeds of products of the foregoing, wherever located.

NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

OR	ORGANIZATION'S NAME			
	Iowa Department of Economic Development			
INDIVIDUALS LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	

OPTIONAL FILER REFERENCE DATA

10-IVF-026

Use this space for additional information

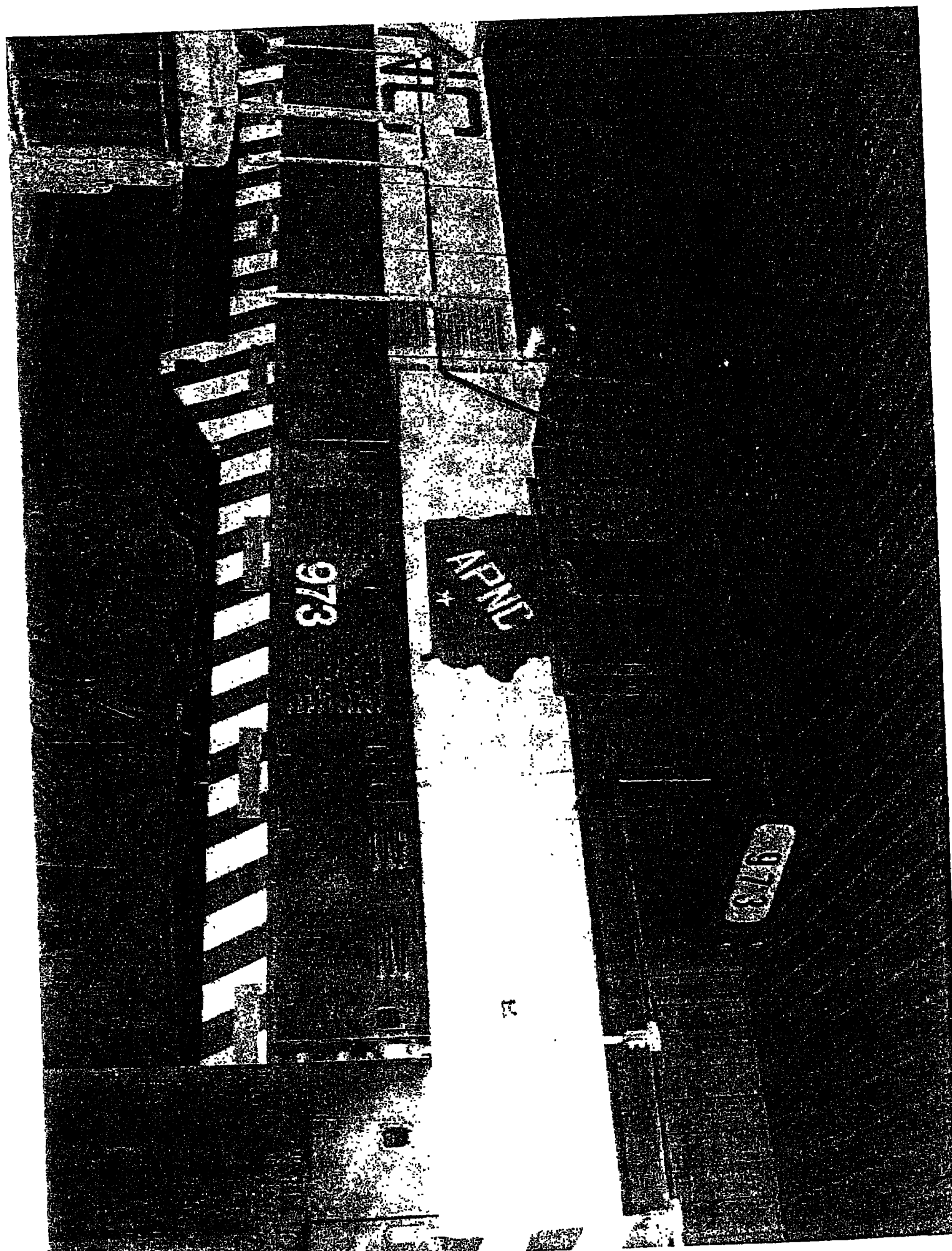


EXHIBIT D1 - PROMISSORY NOTE (Railroad)
Recipient: Appanoose County Community Railroad
Community: Appanoose County
Contract Number: 10-IVF-026
(Forgivable Loan)

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned promises, in the event this Forgivable Loan is not forgiven, to pay to the order of the IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT, at its office at 200 East Grand, Des Moines, Iowa. 50309, the sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)** with interest at a rate of 0 % unless an Event of Default occurs, in which case interest shall be at the default rate set forth in Contract number 10-IVF-026 ("Contract"). The terms and conditions by which forgiveness of this Loan may occur are as specified in the Contract.

Interest shall first be deducted from the payment and any balance shall be applied on principal. Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of the holder.

The undersigned, in case of suit on this note, agrees to pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Note on default.

This note shall be secured by the Security specified in the Contract.

Makers, endorsers and sureties waive demand of payment, notice of non-payment, protest and notice. Sureties, endorsers and guarantors agree to all of the provisions of this note, and consent that the time or times of payment of all or any part hereof may be extended after maturity, from time to time, without notice.

Appanoose County Community Railroad

By: Raymond L. Cummins
Ray Cummins, President
Print or Type Name, Title

Address: P.O. Box 321
Centerville, IA 52544

Date 11/24/10

EXHIBIT D2 – PROMISSORY NOTE (Community)
Recipient: Appanoose County Community Railroad
Community: Appanoose County
Contract Number: 10-IVF-026
(Forgivable Loan)

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned promises, in the event this Forgivable Loan is not forgiven, to pay to the order of the **IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT**, at its office at 200 East Grand, Des Moines, Iowa 50309, the sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)** with interest at a rate of 0 % unless an Event of Default occurs, in which case interest shall be at the default rate set forth in Contract number 10-IVF-026 ("Contract"). The terms and conditions by which forgiveness of this Loan may occur are as specified in the Contract.

Interest shall first be deducted from the payment and any balance shall be applied on principal. Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of the holder.

The undersigned, in case of suit on this note, agrees to pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Note on default.

This note shall be secured by the Security specified in the Contract.

Makers, endorsers and sureties waive demand of payment, notice of non-payment, protest and notice. Sureties, endorsers and guarantors agree to all of the provisions of this note, and consent that the time or times of payment of all or any part hereof may be extended after maturity, from time to time, without notice.

Appanoose County

By: Dean Kaster
Dean Kaster, Board Chairperson
Print or Type Name, Title

Address: 201 N. 12th Street
Centerville, IA 52544-1711

Date 11/24/10

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C

APPANOOSE INDUSTRIAL CORPORATION

P.O. Box 362, Centerville, IA 52544 • Phone 641-437-4102

"The community that built its own railroad"

May 6, 2009

Mr. Ray Cummins, President
Board of Directors
Appanoose Community Railroad
1303 South 21st Street
Centerville, IA 52544

Dear Ray,

The Appanoose Industrial Corporation (AIC) unanimously approved the APNC Railroad request for financial assistance to be used as matching funds for Federal grants to make infrastructure improvements to the railroad. The railroad infrastructure improvements will maintain the integrity of the railroad, keep rail service viable, and help to retain approximately four hundred industrial jobs in Centerville and Appanoose County.

AIC will provide the following financial assistance to the APNC RR:

- Payment of costs associated with a special election to obtain voter approval to use the remaining Centerville LOST revenues as railroad matching funds. These costs are estimated at \$4,000.
- \$100,000 cash contribution to the railroad as matching funds for Federal grants. Contribution is available immediately.
- Loan to the railroad to be used for interim financing during the construction period and until the final payment of LOST revenues allocated to the railroad has been paid. Loan will be effective immediately. Terms: Up to \$500,000; 4 percent; 4 years. Loan to be collateralized with assets of the railroad.

Dan Bennett, President
Grag Gorden

Ray Tresemer, Vice-President
Bill Buss, Secretary
Jeff Young

Jerry Kirkpatrick, Treasurer
Madeline Cummins

The Appanoose Community Railroad operation is critical for rebuilding the economy in Appanoose County. The loss of 500 industrial jobs in 2006 with the closing of the Rubbermaid and Knight Rifle plants makes it imperative that the railroad infrastructure be maintained and rail service be available for existing and new industry.

AIC appreciates the work of the APNC RR Board and the financial assistance of EDA and the Federal government in this all-important project.

Sincerely,

APPANOOSE INDUSTRIAL CORPORATION

A handwritten signature in cursive script, appearing to read "Bill Buss".

Bill Buss, Secretary

28E Agreement Concerning LOST Revenue for Appanoose County Community Railroad

WHEREAS, this Agreement is reached on this 5th day of October, 2009, between the City of Centerville, Iowa (hereinafter referred to as "City"), Appanoose County Community Railroad (hereinafter referred to as "Railroad") and Appanoose Industrial Corporation (hereinafter referred to as "AIC"), pursuant to Iowa Code Chapter 28E.

WHEREAS, on July 1, 2003, the City enacted a Local Option Sales Tax (LOST), where an additional sales tax of 1% would be collected.

WHEREAS, the tax revenue was distributed among four purposes: a new fire truck and equipment, a Junior High Gymnasium, Drake Public Library renovations, and 35% of this revenue was to go to construction or renovation of the Centerville City Pool.

WHEREAS, on May 18, 2009, the City Council of the City suspended the City Pool construction or renovation project for lack of funds.

WHEREAS, on May 18, 2009, the City Council of the City did vote to hold a referendum on the following ballot question:

Should the City divert the remaining portion of the Local Option Sales Tax Pool revenue beginning January 1, 2010 to the end of the current local option sales tax sunset to the Appanoose County Community Railroad to be used toward matching grant monies for infrastructure repairs, with any unused portion to be used by the City for any other lawful purpose.

Zero percent (0%) of the revenues shall be expended for direct property tax relief.

WHEREAS, on August 10, 2009, Linda Demry, the Appanoose County Auditor, did certify to the passage of the referendum.

WHEREAS, the parties desire to reach an Agreement for the transfer of the funds from the City to Railroad due to the voters of this City, by a vote of 404 – for the proposition and 63 –

against the proposition. agreeing by a special election on August 4, 2009, to the transfer of these funds.

IT IS THEREFORE AGREED:

1. That beginning with appropriate percentage revenue attributable to the Railroad received as of January 1, 2010, the City will transfer monthly to the Railroad such sums, if any, after approval by the City Council and pursuant to City and State Code. If said funds are received before the Wednesday before the council meeting, the funds shall be placed on the agenda as bills to be approved at the next regular council meeting, which are held the 1st and 3rd Mondays of the month. Once approved, the check will be cut and mailed within the week following said City council meeting.
2. That the City will pay to the Railroad, all sums up until \$600,000.00, the amount needed for grant match which includes interest, or until the sunset of the current Local Option Sales Tax, intended to end June 30, 2013, subject to state law, whichever comes first.
3. That subsequent sums, if any collected, are to be used by the City for any other lawful purpose.
4. That nothing in this agreement implies agreement by the City to pursue LOST revenue for the Railroad for any time period past June 30, 2013.
5. That such sums are recognized to be tax revenue and Railroad will use such sums only as directed by the referendum and as provided by local, state and national law.
6. That such sums are to be used for grant match and will be used pursuant to the grant agreement. That the Railroad is solely liable for the use of this money in accordance with the terms of the grant and hereby releases and indemnifies the City from any liability.
7. That the parties understand that in order to meet deadlines for infrastructure repairs, Railroad has borrowed money from AIC and that revenue monies collected may be used to repay such debt.
8. That the parties, their successors and assigns agree and contract that the City will not in any way be liable for the repayment of the Railroad debt to AIC.
9. That the parties, their successors and assigns agree that this Agreement does not add to the City's long term or short term debt or restrict the City in any way from borrowing subject to state and local law.
10. That such Railroad LOST revenue will be subject to the oversight of the LOST Oversight Committee of the City of Centerville and the City Council of the City of Centerville.

11. That at least annually, or at such other times upon request of the City, the Railroad will provide to the LOST Oversight Committee and the City of Centerville a complete accounting and report on the use of the LOST monies during the previous term and compliance with applicable local, state and federal law.
12. That pursuant to Iowa Code Sections 28E.8 and 28E.6 (1), the President of the Railroad Board will serve as administrator, to have all the responsibility of timely filing the agreement, any amendment, modification, or termination of the agreement, and any report or biennial report with the Secretary of State, and timely complying with any other similar requirements provided for in Iowa Code Section 28E. That the Railroad will bear the cost of the election and City's reasonable fees or costs in providing for the election or this agreement as approved by the Railroad Board.

City of Centerville, Iowa:

Marsha Q. Mitchell

By: Marsha Mitchell, Mayor

Attest:

Kris May
Kris May, City Clerk

STATE OF IOWA)
) ss:
APPANOOSE COUNTY)

On the 5th day of October, 2009, before me the undersigned, a Notary Public in and for said County of Appanoose, State of Iowa, personally appeared Marsha Mitchell, Mayor of the City of Centerville, Iowa, to me personally known, who being by me duly sworn, did say that she is Mayor of said City of Centerville, Iowa, that the seal affixed to said instrument is the seal of said City, by authority of its City Council, as contained in Resolution No. 2009-2937, passed by the City Council on the 5th day of October, 2009 and that Marsha Mitchell, Mayor, acknowledged the execution of said instrument to be the voluntary act and deed of said City by it and by her voluntarily executed.

Joyce E. Davis Notary Public
In and for the State of Iowa

Joyce E. Davis
Iowa Notarial Seal
Commission #170541
My Commission Expires: 8/10/ 11

Appanoose County Community Railroad:

By: Raymond R. Cummings

STATE OF IOWA)
) ss:
APPANOOSE COUNTY)

On the 19th day of October, 2009, before me, the undersigned, a Notary Public in and for said County of Appanoose, State of Iowa, personally appeared Raymond Cummings to me personally known, who being by me duly sworn did say that he/she is the President & Board of Directors of said corporation; that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by the authority of its Board of Directors and that the said Raymond Cummings as such President & Board of Directors acknowledge the execution of this instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

Heather Clark Notary Public
In and for the State of Iowa



Appanoose Industrial Corporation:

By: Daniel Bennett

STATE OF IOWA)
) ss:
APPANOOSE COUNTY)

On the 2nd day of November, 2009, before me, the undersigned, a Notary Public in and for said County of Appanoose, State of Iowa, personally appeared Daniel Bennett to me personally known, who being by me duly sworn did say that he/she is the President of said corporation; that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by the authority of its Board of Directors and that the said Daniel Bennett as such President acknowledge the execution of this instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

Becca Everett Notary Public
In and for the State of Iowa

